

WP(C) 4391/2007

BEFORE

HON'BLE MR.JUSTICE RANJAN GOGOI

Heard Mr. M.H.Choudhury, learned counsel for the petitioner, Mr.B.J.Ghosh, learned Govt. Advocate, Assam and Mr. M.Sarania, learned counsel appearing for the Respondent No.5. The records in original as placed before the Court have been duly perused.

The challenge in the present writ application is against an order-dated 29.6.2007 passed by the Executive Officer-cum-Ex Officio Secretary, Mairabari Anchalik Panchayat whereby the Solabil Meen Mahal has been settled with the Respondent No.5 at an amount of Rs. 10,195.00.

The only ground of challenge made in the writ application is that the petitioner having offered Rs. 19,651.00 and his tender being valid, the Anchalik Panchayat could not have accepted the lower offer made by the Respondent No.5 without prior approval of the Government. As no such prior approval was accorded by the Government, the settlement made in favour of the Respondent No.5 is contended to be wholly illegal.

To enable the Court to dispose of the matter at the admission stage, the records in original as maintained by the Anchalik Panchayat were required to be placed before the Court by the learned Govt. Advocate. The records so placed before the Court have been duly perused. Such scrutiny has revealed that no ground whatsoever has been recorded for ignoring of the higher offer made by the petitioner and that the acceptance of the lower offer of the Respondent No.5 did not have the

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prior approval of the Government as required by Rule 47(10) of the Assam Panchayat (Financial) Rules, 2002.

The settling authority always has the option of refusing to accept a higher offer provided there are good and sufficient reasons to do so. In the present case, the scrutiny of the records by the Court does not reveal any compelling reason for not accepting the higher offer of the petitioner. That apart, the requirement imposed by Rule 47 (10) of the Assam Panchayat (Financial) Rules, 2002 with regard to prior approval of the Government has also not been complied with before settling the Mahal with the Respondent No.5.

In view of the above facts, there will no escape from the conclusion that the settlement made in favour of the Respondent No.5 is contrary to law. The same is, therefore, interfered with. The impugned order dated 29.6.2007 is set aside. The concerned Anchalik Panchayat may now re-settle the Solabil Mahal for the remaining period of the term in accordance with the provisions of the Act and the Rules within a period of two weeks from the date of receipt of a copy of this order or a certified copy thereof.

The writ petition consequently is allowed as indicated above.